“ Uniform Civil Code in India: A Study”

A Synopsis submitted to Himachal Pradesh National Law University Shimla

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INTRODUCTION

"It is necessary that law be divorced from religion. With the enactment of the Uniform Civil Code, secularism will be strengthened, much of the present day separation and divisiveness between the various religious groups in the country will disappear and India will emerge as a much more cohesive and integrated nation."[1]

India is world's largest democracy and second most populous country. With its many languages, cultures and religions, India is highly diverse and, as mentioned in the Preamble of the Constitution of India, is a Secular Country. The Constitution of India under its Article 44 provides for one of the many future aspirations of the Indian Republic i.e. Directive Principle of State Policy; through which the State would overcome the boundaries of religion and community and the State shall endeavour to secure for citizens a Uniform Civil Code throughout the territory of India. Also it has been rightly pointed out that, "the different treatment for any religious group is also violative of the UN Covenant on Civil and Political Rights and the Declaration on the Rights to Development adopted by the world conference on the principle of Human Rights, it is hoped that the Parliament will frame a Uniform Civil Code without further delay, thereby separating religion from ambit of social relations and personal law".[2]

It is pertinent to note that, India has international commitments under a couple of conventions such as the Universal Declaration of Human Rights, 1948 and the Declaration on the Elimination of Discrimination Against Women, 1967; meaning thereby that, "even in absence of Article 44 requiring the state to secure a uniform civil code, the justiciable Rights guaranteed under Part III of the Constitution have to be read in accordance with the international regime of human rights which requires member states to do away with practices and laws derogatory to the dignity of women".[3]

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[1] Indian Constitutional Law, 5th Ed., at 1386.

[2] Satyabrata Rai Chawdhuri, *A Common Civil Code: It is a Constitutional Obligation*, The Tribune, 30th July, 2003.

[3] Jyoti Rattan, *Uniform Civil Code in India: A Binding Obligation under International and Domestic Law*, 46 JILI 577 (2004).

Religions not only have been serving as a foundation of the culture of India, but have had enormous effect on Indian politics and society. In India, religion is a way of life. It is an integral part of the entire Indian tradition. A vast majority of Indians associate themselves with a religion. Therefore, it is very difficult to enforce a Uniform Civil Code in India because of the above mentioned political and social problems.

Even if the legislatures have not made Laws for the effective implementation of the Uniform Civil Code, the Judiciary has taken some of the positive or affirmative action by interpreting the Personal Laws in contrast to some of the Secular Laws in such a way that it helped in implementing the notion of 'Equality and Equal Protection to everyone'.

Nevertheless, the advocates and the critics of the Personal Laws have emphasised on the point that, "it is high time that a Uniform Civil Code or some positive or affirmative are highly needed by way of Legislative Measures and it should come in to force". Though, it is commendable that the Judiciary has come forward to the rescue of the plight of the Personal Laws, but Legislative Measures or relevant Laws have its own importance and effectiveness.

Uniform Civil Code as an expression has its roots from the idea of Civil Law Code.[4] A Uniform Civil Code suggests the possibility of equal/similar arrangement specifying common guidelines for the citizens; independent of their religion, position, and so on. Additionally, the purpose underlying a Uniform Civil Code is to help the idea of national unification by disposal of inconsistencies in light of religious belief systems. All people group in the nation would then remain on a standard stage on civil matters like marriage and divorce, and would not be administered by the different Personal Laws. It is in this sundry connection we need to evaluate the need of Uniform Civil Code.

Objectively, Uniform Civil Code is needed for further requirements:

- To avoid discrimination in matters of marriage, divorce, inheritance etc.
- To fill the void spaces in the personal laws.
- To provide with gender justice.
- Avoid violence against women.
- To settle the ambiguity; which has arisen due to different interpretations of various personal laws.

[4] The Ignited Mind, Need for change (The Ignited Mind Mar., 2016), www.itshardii.wordpress.com

- Modernizing the personal laws as the society is not static.
- To bridge the gap between the personal laws.

LITERATURE REVIEW

Uniform Civil Code (Article 44 of the Constitution) A Dead Letter, The Indian Journal of Political Science[5]

In this paper the need of Uniform Civil Code was felt due to the problem of gender discrimination in the given laws of all the communities. It was also discussed that the caste practices among Hindus are far more important than any law of the country. Also each caste has its own customs, traditions which even supersede all the laws of the country.

Also in this paper Civil Code was defined which is a set of laws governing the civil matters of the citizens in the country relating to matters like marriage, divorce, adoption, custody of children, inheritance, succession to property etc.

It was discussed that if the Common Civil Code enacted will deal with the personal laws of all religious communities relating to the above matters which are all secular in character of Indian state and to enhance fraternity of unity among citizens by providing them with a set of personal laws which incorporates the basic values of humanism.

The objective of the need of Uniform Civil Code was discussed where it aims to overcome the particularistic and often reactionary aspects of personal laws of various religious communities. The objective thus is also to bring a social reform and uplifting the status of women. The Uniform Civil Code is eminently desirable in the interest of modernization of society and for a common system of Justice for all. The absence of Uniform Civil Code gives rise to piquant, unwarranted and ugly situation.

[5] Shabbeer Ahmed and Shabeer Ahmed, "UNIFORM CIVIL CODE (ARTICLE 44 OF THE CONSTITUTION) A DEAD LETTER" *The Indian Journal of Political Science* , JULY - SEPT., 2006, Vol. 67, No. 3 (JULY - SEPT., 2006), pp. 545-552.

This paper even argues that in pursuance of the goal of secularism, the state must stop administering laws. Every rational being committed to secular principles accepts this view, state to achieve national harmony through the implementation of the directive IV of the constitution. Despite the progressive judicial pronouncements and juristic opinions out the directive under article 44 of the constitution, parliament has done nothing to achieve this noble ideal.

Uniform Civil Code: Implications of Supreme Court Intervention, Economic and Political Weekly[6]

In this weekly editorial then recent case (SarlaMudgal) was discussed where a Hindu had converted himself to Islam in order to marry a second wife while the first was living.

The Supreme Court was provoked to ask the union government what it had done in pursuance of the directive principle of state policy contained in article 44 of the Constitution which enjoins upon it to take steps for providing a Uniform Civil Code.

This even triggered a debate on this subject where Uniform Civil Code was considered ideal and laudable. Justice Kuldip Singh said that a Uniform civil code would strengthen national integration and that the minorities should give up their commitment to the two nation theory and agree to a Uniform civil code. It was further said that the Hindus had accepted reforms in their personal laws and sacrificed for the national unity.

It was further interpreted by Supreme Court that the word 'uniform' in article 44 means that all communities must be governed by uniform principles of gender justice and human justice. Each personal law therefore needs to be critiqued from the perspective of social and gender justice. It will mean the modernization and humanization of each personal law. A uniform law would mean- not necessarily a common law but different personal laws based on uniform principles of equality of sexes and liberty of the individual. It was further observed that Article 44 of the Constitution must be interpreted in conjunction with article 14 of the Constitution which guarantees equality before the law and equal protection of the law.

[6] S. P. Sathe, "Uniform Civil Code: Implications of Supreme Court Intervention" *Economic and Political Weekly* , Sep. 2, 1995, Vol. 30, No. 35 (Sep. 2, 1995), pp. 2165-2166.

Furthermore it was argued that the right to be governed by personal law was never considered as part of the right to freedom of religion guaranteed by article 25 of the Constitution. Moreover, Freedom of religion guaranteed by article 25 of the Constitution is subject to "other provisions of this Part" which means it is subject to the provisions contained in Part III which contain guarantees of the fundamental rights. Even if freedom of religion comprehends the right to be governed by personal law, it does not cover the right to perpetuate denial of equality or personal liberty to a section of people who are governed by such personal law. Reform of the personal law would be for making these laws consistent with the Fundamental Rights of the women folk and it would also be a measure of social welfare for which the state needs to legislate.

Uniform Civil Code: A Suggestion, Journal of the Indian Law Institute[7]

In this paper it was discussed that Art 44 though not enforceable through the courts of law, yet it is fundamental in the governance of the country. No time limit has been laid for the implementation of the directive principles of state policy by the makers of the Constitution. This was provided because the members wanted the wounds of partition to heal up and the country be prepared for a change in the personal laws. The Government of India has so far not applied its mind to fulfill this positive obligation laid down upon it by the Constitution of India because of the fact that article 44 is not a mandate to it. This fact itself is a hindrance in its being implemented.

Also in this paper certain other obstructions were discussed such as large power, both with the Parliament of India and state legislatures, to legislate upon most of the topics which may be included in the uniform civil code. And the main hindrance being the different religious sects having different personal laws which are very dear to them and they do not like that any outside agency.

Nonetheless the objectives set by article 44 of the earnest attention of the state and an endeavor to implement it soon.

[7] D. C. Manooja, "UNIFORM CIVIL CODE: A SUGGESTION" *Journal of the Indian Law Institute*, April-December 2000, Vol. 42, No. 2/4, Constitutional Law Special Issue (April-December 2000), pp. 448-457.

Also in this paper it was discussed about the two objections which were raised against the making of a uniform civil code for whole of India in the constituent assembly

- It will violate the freedom of religion ensured in article 25 of the Constitution
- It will amount to tyranny to the minorities

It was then argued that the first objection is not proper as the directive contained in article 44, in no way, infringes the freedom of religion guaranteed by article 25 of the Constitution of India. Clause (2) of article 25 specifically saves secular activities associated with religious practices.

In response to the second objection given by Shri K.M. Munshi, member of the drafting committee, in the constituent assembly is worth noting. He said "Nowhere in advanced Muslim countries the personal law of each minority has been recognized as so sacrosanct as to prevent the enactment of a civil code."

Also in this paper it was observed that Mr. Munshi felt that a uniform civil code was essential only if we wanted a unified and secular country. Views of Dr. Ambedkar were pointed out where he said that India had a uniform code in 11 matters namely: contract, transfer of property, sale of goods, partnership, companies, negotiable instruments, civil procedure, arbitration and limitation, crimes, criminal procedure and a host of other statutory laws save those of marriage, succession, adoption and maintenance.

Further views of Dr. Ambedkar were pointed out in this paper that it was wrong to say that Muslim law was immutable and uniform throughout India till 1935. The Shariat law did not apply to North West Frontier provinces, which followed Hindu law for succession and other matters. In 1939 Shariat law was applied to them. Similarly, Hindu law of succession was applicable to Muslims in various parts of united provinces, central provinces and Bombay.

The paper was concluded by quoting Dr. Ambedkar's views in the Constituent Assembly that the Muslim law has been an immutable law which they have been following from ancient times. That law as such was not applicable in certain parts and it had been made applicable ten years ago. Therefore, if it was found necessary that for the purpose of evolving a single

civil code to all citizens irrespective of their religion, certain portion of the Hindu Law, not because they were found to be most suitable were incorporated into the new Civil code projected by Art 35.

Also it was discussed in the paper that Uniform civil code amounts to equal laws for all sections of our society. All the people of India must be governed by one set of laws. For national unity and for secularism, uniform civil code is necessary. The plurality of laws in personal law matters is a blow and direct threat to national integrity and solidarity. It is worth mentioning the name of a few countries where a uniform civil code has been functioning successfully such as Germany, France, Spain, Canada, Japan, Turkey and Portugal.

Muslim Women's Voices: Expanding Gender Justice under Muslim Law, Economic and Political Weekly[8]

In this editorial an opinion survey among Muslim women in a section of Delhi was conducted indicating that that while the enactment of a Uniform Civil Code is a difficult proposition, the objectives sought to be promoted through the enactment can be achieved equally well by a process of reform of personal laws through the internal initiatives of different communities.

The aim of the survey was to articulate Muslim women's voice on this question by focusing on the response offered by women respondents on aspects of social practice and law which are the core of the issue of gender justice and the principal reason for the demand of a Uniform Civil Code on the part of those who feel that gender justice cannot be assured under traditional personal laws of the different communities in general and Muslim Personal Law in particular.

The broad consensus which seems to be emerging in Indian society with respect to the enactment of Uniform Civil Code is that such an enactment is a difficult proposition, but the objectives sought to be promoted through the enactment of Uniform Civil Code can be achieved equally well by a process of reform of the different personal laws through internal initiative of the communities themselves. The data from the respondents showed that there is

[8] Sabeeha Bano, "Muslim Women's Voices: Expanding Gender Justice under Muslim Law" *Economic and Political Weekly* , Nov. 25, 1995, Vol. 30, No. 47 (Nov. 25, 1995), pp. 2981-2982.

a clear understanding of the need for this kind of reform as well as a clear understanding of the areas where such reforms are called for.

In the survey conducted respondents' specific answers also go to show this broad consensus. The respondents were asked to indicate whether a Uniform Civil Code should be enacted, or Muslim Personal Law should be retained as it is, or it should be reformed. Only 29 (14 percent) respondents said that Muslim Personal Law should be replaced with a gender-just Uniform Civil Code, and a roughly equal number 30 (15 per cent) felt that Muslim Personal Law should be retained as it is. Of the remaining respondents, 35 (28 percent) felt that Muslim Personal Law should be retained with minor changes and another 57 (29 per cent) said that Muslim Personal Law needs drastic reforms, but that these changes should be brought about within an Islamic framework. There cannot be clearer indication for the leaders of the community and greater reason for them to initiate the process of reform than this testimony.

Reversing the Option: Civil Codes and Personal Laws, Economic and Political Weekly[9]

In the present political situation where the issue of women's rights continues to be subordinated to the imperatives of majoritarianism and minoritarianism, it is necessary to make a conceptual shift in the way in which family laws have so far been envisaged. This note presents a proposal prepared by a Working Group on Women's Rights which, while restoring the focus on women's rights, also aims to change the terms of the debate. The members of the Working Group are Amrita Chhachhi, Farida Khan, Gautam Navlakha, Kumkum Sangari, Neeraj Malik, Nivedita Menon, Ritu Menon, Tanika Sarkar, Uma Chakravarti, Urvashi Butalia and Zoya Hasan.

The broad principles in their proposal as suggestions were outlined for discussion:
(1) All citizens are guaranteed the common secular gender-just law, but can choose to opt for their personal laws.
(2) These laws will be based on the principle of equal rights for women as well as on the principle of affirmative action wherever necessary.

[9] "Reversing the Option: Civil Codes and Personal Laws" *Economic and Political Weekly* , May 18, 1996, Vol. 31, No. 20 (May 18, 1996), pp. 1180-1183.

(3) These laws will be comprehensive covering areas of marriage, compulsory registration of marriages, divorce, inheritance, guardianship, rights of residence, rights to matrimonial property, domestic violence as well as access to resources, rights to work, equal wages and benefits.

(4) Once the principle of reverse optionality is operationalised there would be, at a point in time, three categories of citizens: (a) citizens who are governed by common gender-just laws, (b) citizens who express an option for personal laws, and (c) citizens who are caught in a situation of conflict if one party has chosen personal law.

(5) In the case of a conflict, contest or unforeseen contradictions between secular law and personal law, the broad principle should be that secular law should prevail.

(6) The decision to be governed by personal law should be revocable at moments of legal conflict. The principle of revocability is important because the decision to choose personal law can be forced on young women, particularly at sensitive moments (such as marriage) when they would find it difficult to express their own opinion. Therefore the right to gender-just laws should not be irretrievably lost.

(7) The content and ambit of the gender- just laws will be far wider than the present laws, since it will bring in new legislation as well as change the scope and content of the present laws. Only those provisions of the new laws which cover the same area as personal laws will be revocable.

Uniform Civil Code in India: A Binding Obligation under International and Domestic Law[10]

This Article argues that under International law, a state that ratifies an international instrument becomes legally bound to implement its provisions. Accordingly, India having ratified the International Covenant on Civil and Political Rights, 1966, and International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979, is bound to enforce the relevant provisions and ensure gender equality under national laws. However, women in India under Hindu, Muslim and Christian laws continue to suffer discrimination and inequalities in the matters of marriage, succession, divorce and

[10] Jyoti Rattan, "Uniform Civil Code In India: A Binding Obligation Under International And Domestic Law" *Journal of the Indian Law Institute* , October-December 2004, Vol. 46, No. 4 (October-December 2004), pp. 577-587.

inheritance. So as a step towards a gender just code, the personal laws of various communities in India need a closer look and reform, not only in compliance with the Indian Constitution but also as per the provisions of the international law.

It even emphasizes that one should not forget that nationhood is symbolized by one Constitution, a single citizenship, one flag and a common law applicable to all citizens and India's obligations under international law and requirements of various international instruments relating to the human rights of women such as the Universal 1948 and the Declaration on the Elimination Women, 1967, also demand that even if one rules out article 44 the Union of India cannot evade its international obligation to make laws to remove all discrimination against women.

It can be said that in India, it is mainly the personal laws that most intimately continue to affect the lives of millions of women of all communities. But despite various efforts under international instruments and reform of national laws for ensuring gender equality, women continue to be treated unequally and discriminated specifically in the areas of marriage, divorce, adoption, custody and the right to own and inherit property. In such a situation, a gender just code is the need of the hour.

Thus, a uniform civil code is vital for the protection of the oppressed, promotion of national unity and solidarity, for safeguarding the human rights of women in India irrespective of the religious community they belong and, moreover, to bring the national laws in conformity with the legally binding provisions of international law in the form of various international human rights instruments already ratified by India.

What Would Your Founding Fathers Think? What India's Constitution Says-And What Its Framers Would Say-About the Current Debate over a Uniform Civil Code[11]

This Paper discuss about that The Indian Constitution directs the central government to work toward establishing a Uniform Civil Code that applies to all Indian citizens. Yet the

[11] Srikanth Reddy, "What Would Your Founding Fathers Think? What India's Constitution Says-And what Its Framers Would Say-About the Current Debate Over A Uniform Civil Code" 41 GEO. Wash. INT'l L. REV. 405 (2009).

government has not enacted a code in the nearly sixty years since India adopted its constitution, and this remains a divisive issue in Indian politics. With so much diversity, it is difficult to achieve uniformity. Thus India continues a system in which personal law-law relating to family matters, such as marriages, divorces and inheritances-is not uniform for all, but instead may still be governed by a person's religion. There are those who say a Uniform Civil Code is a necessity in a secular nation, to ensure equal treatment under the law for all citizens." There are those-many of them members of minority religions who fear the motives of their opponents in the majority and believe that their traditions deserve protection in a secular nation that guarantees them religious freedom.

This paper even argues that there are civil courts that must rule on what practices are religious and what practices are secular, with the consequences of those decisions sometimes extending far beyond the parties in the courtrooms. And there are politicians ready to take advantage of the disagreement. The consequences include communal tensions, fear, distrust, and alienation, all of which prevent India from fully realizing the vision its founders had for the nation at its inception.

India should ultimately adopt a Uniform Civil Code. Any argument that relies on the intentions of India's founders must also acknowledge that they believed the country should have one. Equality for all citizens under the law is a worthy goal, and it would prevent the nation's judiciary-and, indeed, all of the branches of government-from getting tangled up in matters of faith.

This paper concluded that the current situation in India, however, does not lend itself to a Uniform Civil Code. The country's founders would not have wanted to introduce a Uniform Civil Code at this moment, and the volatility of Hindu-Muslim relations at this moment makes such a decision imprudent. Instead, India should work to make minority groups, particularly Muslims, feel welcome and accepted within its borders. Only then will it be able to move closer to the vision of its founders: becoming a country in which narrow group identities fade and a national identity emerges.

Charting a New Path toward Gender Equality in India: From Religious Personal Laws to a Uniform Civil Code[12]

This paper talks about the religious personal law systems of India which have not helped Indian women, nor have they been effective in protecting the rights of the religious communities in which Indian women live. Rather, the preservation of these separate laws has served to deepen the division between the majority Hindu population and minority religions, particularly Islam. The personal laws have also perpetuated-and arguably enhanced tensions between these two groups by reinforcing identities that oppose one another. India must take care to move away from religious personal laws and toward a uniform civil code, as envisioned by Article 44 of the Indian Constitution.

The paper argues that the highly debated Article 44 of the Indian Constitution provides that "the State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India." If ever fulfilled, Article 44 would almost certainly sound the end to religious personal law, requiring all Indians to be governed by one secular civil code. There is, however, no guarantee that this will ever happen because the Article is found in the Constitution's Directive Principles and is therefore not judicially enforceable. This designation of the Article as a Directive Principle was driven by the Assembly's desire to achieve national unity-and not gender equality-by reassuring Muslims that their personal laws would not be upset. The Constitution provides no timeline for the implementation of Article 44, nor does it provide any process by which it should be drafted.

The paper focuses on the three main problems that have resulted from maintaining religious personal law systems in India. First, the laws have perpetuated a myth of state neutrality, while in reality; the government inevitably takes sides in religion when it transfers political power to religious leaders. Second, religious personal laws have had the effect of "freezing" minority religious cultures, thereby silencing internal dissent. Lastly, the existence of the laws has inflated the importance to Muslims of maintaining a group identity that is distinct from the state, thus intensifying intergroup distrust and hostility.

[12] Shalina A. Chibber, "Charting a New Path Toward Gender Equality in India: From Religious Personal Laws to a Uniform Civil Code" 83 IND. L.J. 695 (2008).

The answer to India's personal laws rests no more with the legislative branch than it does with the judiciary. Parliament simply cannot be trusted to implement a fair and legitimate uniform civil code, and any attempt to put forward a draft will only cause more chaos and strife. The reason that Parliament will not be successful in implementing a legitimate uniform civil code is twofold:

(1) the politicians who most strongly support a code have overt Hindu-centered aims, making it difficult for minority groups to accept their ideas; and
(2) as a result, any code that the government creates will merely reflect the brand of patriarchy espoused by the majority, and will not provide the gender equality required by Article 14 of the Constitution.

Given that the prospect for legislation on a uniform civil code is not realistic under current circumstances, a number of alternative approaches have been proffered by legal scholars and political theorists. Though not without merit, these methods nonetheless fail to address some of the core problems caused by the religious personal law system.

The paper even focuses on the alternative plans instead of implementing Uniform Civil Code. It talks about any plan that provides Indians with the option to be governed either by a uniform civil code or by their religious [personal] laws is wholly incapable of providing women with real protection. Advocates of this view claim that an opt-in or opt-out provision respects group rights and protects individual autonomy by allowing people to choose the law that will govern them.

This argument misses two key problems, however. First, an option plan is facially misleading because "the majority of women in India do not enjoy the privilege of making choices about their rights." This "right of exit" approach thus offers no real solution for women, because it does not furnish an answer to this question. The second problem talks about being patently unfair to place the "burden of resolving conflict upon the individual," while "relieving the state of any responsibility for the situation."

The paper provided with certain suggestions in order to address the reactive culturalism occurring in the Muslim community and the deepened religious divide over the personal laws, a complete abrogation of the religious personal law system is necessary.

Because this project is so ambitious, however, the government should proceed in stages that will keep religious groups involved in the process and on board with the ultimate objective of enacting a uniform civil code under which all Indians can be governed. The central goal of the process described in this Part is to provide Indians of all religious communities a long, but defined, period of time in which (1) to reform their own personal laws, and (2) to contribute to the creation of a uniform civil code. By involving both men and women of the different religious groups in the discussion and final outcome, this plan strives to legitimize the process by encouraging internal reform.

Cases

***Mohd. Ahmed Khan* v *Shah Bano Begum*, 1985 SC[13]**

The Court observed that the Section 125 of Code of Criminal Procedure, 1973; is religion neutral i.e. the provisions of the maintenance as provided thereto would be applicable irrespective of the religion of the claimant and there is no limitations upon the same by application of any of the Personal Law. Court also observed that the provisions of the Personal Laws and that of the Code of Criminal Procedure are not contradictory to each other; but rather, they complement each other to best sub-serve the intended purpose i.e. to provide with financial and related facilities to the dependents of working individual. Further, the Court went on to say that, "a Common Civil Code will help the causes of National Integration by removing disparate loyalties to law which have conflicting ideologies".

***Ms. Jordan Diengdeh* v *S.S. Chopra*, 1985 SC[14]**

The Court effectively expressed its shock and observed it to be a total failure and unsatisfactory state of affairs to not implement Uniform Civil Code. Court also observed that, "one can wonder and ask how much time it will take for the government to implement the mandate of the framers of the Constitution of India. The traditional and personal laws of Hindus governing various matters like inheritance, succession and marriage was codified by 1955-56. Hence, there exists no justification whatsoever in delaying the introduction of Uniform Civil Code indefinitely for the citizens of this country".

[13] *Mohd. Ahmed Khan V/s. Shah Bano Begum* ,1985 (1) SCALE 767.

[14] *Ms. Jordan Diengdeh V/s. S.S. Chopra*, 1985 AIR 935.

***Smt. Sarla Mudgal, President, Kalyani* v *Union of India*, 1995 SC**[15]

The Court pointed out and observed the underlying objectives and the importance of a Uniform Civil Code in general for the benefit and social wellbeing of the subjects of the State i.e. the People. Justice Kuldeep Singh even lamented that, "Indian government, even after 47 years of independence, had failed to enact a Uniform Civil Code".

***Ahmedabad Women Action Group (AWAG)* v *Union of India*, 1997 SC**[16]

The Court observed that, "the country in such complicated circumstances could better focus on reforming the personal laws first and then in a piecemeal fashion implement a civil code that will take shape as the need of the society evolves. A gradual change is better suited in a democratic country on principles, and the same would also better serve the purpose of evolving the national conscience along with the law". Court further observed that, "it would therefore be inexpedient and incorrect to think that all the laws have to be made uniformly applicable to all the people in one go. Thereupon, while the space of personal law shrinks, the legislature can replace the judicial guidance on law with legislation to that effect; while at the same time educating the masses and tilting the political opinion towards support of progressive legislations".

***Lily Thomas* v *Union of India*, 2000 SC**[17]

The Court again reiterated its emphasis on the need of the Uniform Civil Code for the better of the society and especially with respect to Secular and Democratic India as it entails the subjects with equality and equal protection of law without compromising on the basic tenants of people's religious freedom.

***Daniel Latifi* v *Union of India*, 2001 SC**[18]

The Court acting under external politics and pressure upheld the Constitutional Validity of the Muslim Women (Protection of Rights on Divorce) Act, 1986; and interpreted the concerned provisions of this Legislation so as to pass on the maximum benefit to the Divorced Muslim Women all across India. The Court also contrasted between the scope and

[15] *Smt. Sarla Mudgal, President, Kalyani V/s. Union of India*, AIR 1995 SC 1531.

[16] *Ahmedabad Women Action Group (AWAG) V/s. Union of India*, AIR 1997, 3 SCC 573.

[17] *Lily Thomas V/s. Union of India*, (2000) 6 SCC 224.

[18] *Daniel Latifi V/s. Union of India,* AIR 2001 SC 3958.

limitations of a claim of Maintenance under the Code of Criminal Procedure and the Muslim Women (Protection of Rights on Divorce) Act, 1986.

***John Vallamattom* v *Union of India*, 2003 SC[19]**

The Court observed that, "the state has a negative obligation under Article 25 of the Constitution of India as a Fundamental Right, to favour the retention of different personal laws". The Court further observed that, "marriage, succession etcetera were matters more in the nature of secular than religious activities and thus, not protected by the guarantee under Articles 25 and 26".

***Shayara Bano* v *Union of India*, 2017 SC[20]**

The Court held the practice of 'Triple Talaq' to be unconstitutional. Court whilst exercising its Extraordinary Jurisdiction under Article 42 of the Constitution of India found that the practice of Triple Talaq is not an essential practice of the Islamic belief and therefore does not deserve the protection of Articles 25 and 26. Further, the Court found the practice to be inherently arbitrary, as this kind of divorce is instant, irreversible and unilateral. Also, this form of Talaq deprives women of their rights, safety, subsistence and the Right to Life itself.

Now, the Personal Laws are being reviewed and modified through mutual cooperation between different institutions of the state i.e. the legislature and the judiciary. In Menski's words, "India has emerged with a strategy of carefully planned minor changes over a long span of time through an intricate interconnection between Judicial Activism and Parliamentary Intervention"

STATEMENT OF PROBLEM

- The need for implementing a Uniform Civil Code in India is essential as there is a huge gap between different personal laws.
- The major problems for having a Uniform Civil Code in India are the country's diversity and personal laws.
- Non incorporation of Uniform Civil Code as per Art 44 may cause Gender Inequality.

[19] *John Vallamattom V/s. Union of India,* (2003) 6 SCC 611.

[20] *ShayaraBano V/s. Union of India,* AIR 2017 9 SCC 1 (SC).

OBJECTIVES

1. To find out the areas of personal laws which require uniformity.
2. To analyze the judicial approach towards the personal laws and Uniform Civil Code.
3. To analyze the issues relating to implementation of Art 44 of Directive Principles of State Policy.
4. To suggest appropriate solutions by framing a model for Uniform Civil Code.

RESEARCH QUESTIONS

Prof. Faizan Mustafa has correctly summarized about the prospects of the Uniform Civil Code as, "Uniform Civil Code is desirable for transition or legal reform of religious personal laws of different communities. However, the same is not a sudden change that should be brought up; rather it should be reform of personal laws taken over a long period of time to be effective as it would yield better results if implemented in phases and would be socially acceptable. Essentially, the policy of the government is not to interfere in any community's personal laws unless a demand is made for reforms from concerned communities".[21]

Followings are the concerned issue to be explored to practically and effectively address the underlying social issue related to the research topic:

- Whether the implementation of Uniform Civil Code will help to achieve the goal laid down in Art 14 of the Constitution?
- Whether Judiciary has been progressive in its approach vis-a-vis Uniform Civil Code?
- Whether Non-Implementation of Uniform Civil Code is a reason for gender inequality?

[21] Prof. Faizan Mustafa, *I Favour Uniform Civil Code in A Piecemeal manner*, January 24 2017; Available at: http://www.livelaw.in/favour-uniform-civil-code-piecemeal-manner-interview-nalsar-vc-prof-faizan-mustafa/, last accessed on January 27, 2021.

SIGNIFICANCE OF DOING THE RESEARCH

- The enactment of the Uniform Civil Code applicable to all the citizens from diverse religions is indeed a positive and necessary socio-legal reform to provide with equality or equal protection of Law to its subjects i.e. the people in their civil matter.
- An effective and reasonable legislation called the Uniform Civil Code would help in erasing the discriminatory practices as practiced under different Personal Laws or specific Customary Laws, without disturbing or interfering in the basic tenants or freedom in community's religious aspect.
- Through this research work, misconception and misinterpretation regarding religious personal laws would be eradicated

HYPOTHESIS

- There is a need to frame Uniform Civil Code in order to ensure Equality, Fraternity and Uniformity.

RESEARCH METHODOLOGY

- This thesis is doctrinal and non-doctrinal in nature. The researcher will mainly follow the doctrinal method of research to analyze the need, objective and importance of the research topic in answering the current social issues of the real world with the help of books, reports, journals etc.

- Further, the researcher will undertake the empirical method of research including interview/questionnaire/schedule method to analyze the status of personal laws such as marriage and succession only in Goa where Uniform Civil Code is implemented and in the region of Delhi in order to give credibility to the research. The sample method would be stratified random sampling. The Sample Size would be 100. Respondents would be from the legal fraternity such as Law students, Academicians, Judges, Research Scholars and Lawyers both male and female. The Universe would be Delhi region and State of Goa.

PLAN OF STUDY/CHAPTERISATION

CHAPTER 1: INTRODUCTION

- 1.1 Introductory
- 1.2 Literature Review
- 1.3 Statement Of The Problem
- 1.4 Conceptual Framework
- 1.5 Research Methodology
- 1.6 Objectives
- 1.7 Research Question
- 1.8 Limitations And Scope Of Research

CHAPTER 2: HISTORICAL DEVELOPMENT OF UNIFORM CIVIL CODE

CHAPTER 3: CONSTITUTIONAL AND LEGISLATIVE MEASURES

CHAPTER 4: JUDICIAL INTERPRETATION VIS-À-VIS UNIFORM CIVIL CODE

CHAPTER 5: EMPERICAL STUDY

CHAPTER 6: CONCLUSION AND SUGGESTIONS

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